

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-212277

DATE: August 8, 1983

MATTER OF: Edward E. Mundy Trucking and
Lumber Company

DIGEST:

Although Forest Service policy permitting consideration of late bids for timber sales recently has changed, when Instructions to Bidders state that Federal Procurement Regulations clause will apply, late bid sent by certified mail 3 days before opening was properly rejected, since delay was due to Postal Service, rather than to mishandling at Government installation.

Edward E. Mundy Trucking and Lumber Company protests the Forest Service's rejection of its late bid for the Hamby Bend Timber Sale, Nantahala National Forest, North Carolina, on grounds that it should not be penalized for a delay caused by the U. S. Postal Service.

We deny the protest.

Bid opening was scheduled for Monday, June 27, 1983, at 2 p.m. According to the protester, its bid was sent by certified mail on Friday, June 24, 1983, arriving at the Asheville, North Carolina, Post Office that night. However, the Forest Service did not receive Mundy's bid by the 2 p.m. opening and consequently rejected it as late.

The contracting officer allegedly told Mundy that its late bid would be considered if the delay had been caused by the Postal Service. After obtaining a letter from the Postal Service stating that the bid was not placed in the Forest Service box earlier due to the heavy workload in the Asheville Post Office, Mundy was informed by the contracting officer that a new policy concerning late bids had gone into effect in May 1983. Under this new policy, which is essentially the same as that of the Federal Procurement Regulations (FPR) § 1-2.201(b)(31) (amend. 193, July 1978), late mailed bids may be considered only

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if they are received before award and if (1) they were sent by registered or certified mail not later than 5 days before bid opening or (2) where the sole cause of delay is mishandling after receipt at the Government installation.

Mundy basically contends that the new late bid policy should not apply in this case because it was not informed of it before the sale. The Forest Service's old policy on late bids, set forth in the Forest Service Manual § 2431.74--5 (February 1981, amend. 123), permitted acceptance of such bids if they had been sent by registered or certified mail:

"* * * * for which an official dated post office stamp (postmark) on the original receipt for certified mail has been obtained, and it is determined that the lateness was due solely to delay in the mails * * *."

The Forest Service informally advises us that an addendum to the Instructions for Bidders, included in the standard form used for the Hamby Bend sale, stated that bids received after the designated time for opening would be treated according to the Forest Service Manual provision. That, however, has been changed to delete the "delay in the mails" exception and to incorporate the FPR clause on late bids. We therefore find that the Forest Service properly rejected Mundy's late bid. See The Hoedads, B-185919, July 8, 1976, 76-2 CPD 21.

Since Mundy's bid was received at the designated office after the exact time stated for opening in the advertisement, it was late. A late bid may not be considered for award unless the regulations in effect at the time allow for its consideration. The fact that the contracting officer subsequently told Mundy that its late bid would be considered if the Postal Service was "at error" is unfortunate, but does not change the legal consequences of its late arrival.

Our Office generally requests a report from the procuring agency upon receipt of a protest and withholds our decision pending receipt and review of the report. See 4 C.F.R. § 21.3 (1983). However, where it is clear

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from an initial submission that a protest is without legal merit, the matter will be decided summarily. Tenavision, Inc., B-207977, July 20, 1982, 82-2 CPD 64.

The protest is denied.

for *Milton J. Aorlan*
Comptroller General
of the United States